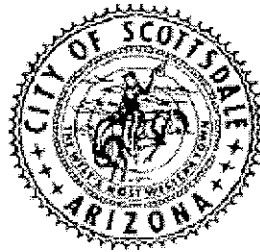


AS APPROVED JANUARY 17, 2006



AMENDED SUMMARIZED MEETING MINUTES

**CITIZEN CODE OF ETHICS TASK FORCE
REGULAR MEETING
PINNACLE CONFERENCE ROOM
7575 EAST MAIN STREET
SCOTTSDALE, ARIZONA
DECEMBER 19, 2005**

PRESENT: Art DeCabooter, Chairman
Jim Bruner
Jim Derouin
Rita Saunders-Hawranek
Dewey Schade

ABSENT: Margaret Dunn
Ned O'Hearn

STAFF PRESENT: Jay Osborn
Teri Traaen

ALSO PRESENT FOR ALL OR PART OF THE MEETING:
Lisa Blythe
Tim Delaney
Merlin Gindlesperger
Mike Kelly

CALL TO ORDER

The regular meeting of the Citizen Code of Ethics Task Force was called to order by Chairman DeCabooter at 5:06 p.m.

ROLL CALL

Chairman DeCabooter noted that members of the Task Force were present as stated above.

OPEN CALL TO THE PUBLIC

Mr. Merlin Gindlesperger addressed the meeting, saying he is a retired pastor with overseas missionary experience and is very interested in ethics. He has read minutes of past meetings. It was bothersome to him that at times there seemed to be a trend towards punishment. He believes that people are basically good. In his experience in the ministry, he found that mostly people need guidance, not discipline. To him, a set of guidelines coming out of an ethics code would be more helpful.

At the request of Chairman DeCabooter, attendees who are not members of the Task Force introduced themselves. Mr. Jay Osborn is Senior Assistant City Attorney and legal advisor to the Task Force. Dr. Teri Traaen is General Manager for Human Resources for the City. Mr. Tim Delaney is with the Center for Leadership, Ethics and Public Service and will be assisting the Task Force. Mr. Michael Kelly is a Scottsdale citizen. Ms. Lisa Blythe works in the Mayor and Council office.

APPROVAL OF THE MINUTES, DECEMBER 6, 2005

Mr. Osborn noted that in the minutes, the vote to approve the minutes of the previous meeting should say, "The motion carried by unanimous vote of 7 to 0." The minutes incorrectly state "by unanimous vote of 7 to 1."

On the third paragraph of page 4, the word "regulations" should be struck and replaced with "grounds for discipline." He said he was referring to Code provision 14-72.

Finally in the penultimate paragraph on page 4, the first sentence should say, "Mr. Derouin noted that the State statute does not prohibit using public office to influence a decision."

MR. BRUNER MOVED THE APPROVAL OF THE MINUTES OF THE DECEMBER 6, 2005 MEETING AS AMENDED. MS. SAUNDERS-HAWRANEK SECONDED THE MOTION WHICH CARRIED BY A UNANIMOUS VOTE OF 5 (FIVE) TO 0 (ZERO).

DISCUSSION ON PROPOSED COMPONENTS OF ETHICS POLICY/PROGRAM

Dr. Traaen referred Task Force members to the yellow page in their packet entitled "Citizen Code of Ethics Task Force Matrix Work Session." It is labeled "Suggested key areas of inclusion for policy and program." She noted that Mr. Delaney had also received this material ahead of the meeting.

Mr. Bruner commented that in past meetings there has been discussion as to which groups the Code of Ethics should cover. A discussion ensued on the draft of AR -320, which is intended as a set of rules for staff including employees, volunteers, and contract workers, but which has not yet been enacted. Dr. Traaen said her understanding is that the draft is ready to be reviewed. Because the Task Force was being set up, it had not yet been reviewed and finalized.

Mr. Derouin suggested that if most of the work is done already on AR-320, the Task Force could consider recommending the adoption of the employee ethical code. Some other things such as annual training could perhaps be added into that. By doing this, the Task Force would not need to concern itself with how provisions for elected or appointed officials fit the workforce.

Mr. Schade confirmed with Dr. Traaen that, if adopted, AR-320 would be viewed as an ethics code for City employees. He asked whether staffs in other jurisdictions are subject to a code of

ethics. He stated that there is a need for guidelines for staff. People are more likely to complain about elected officials, but in a bureaucracy, employees who act unethically can cause huge problems.

Mr. Bruner agreed that this code is specific to staff. He would strongly recommend that City Council adopt AR-320. The Task Force needs to keep moving to draw up a code of ethics for elected and appointed officials.

Ms. Saunders-Hawranek suggested that when the code is drawn up it should be presented to hired staff, rather than excluding them. Mr. Schade said that ultimately there should be one standard of ethics.

Chairman DeCabooter said he expects that the two codes will be similar and not mutually exclusive. He would like to consider a motion to recommend to City Council that it approve AR-320. Mr. Osborn said this item could go on the agenda for the next meeting.

Mr. Derouin suggested that the relationship of the ethical standards, AR-320 to the mechanism for discipline in 14-72 be made quite clear. The standard cross-references 14-135. 14-72, which is grounds for discipline, in subsection 5 cross-references 14-135.

Mr. Osborn said that 14-135 relating to gifts and gratuities is a cross-reference to a Code provision. 14-72 is the grounds for discipline. Subsection 28 of that Code provision makes it grounds for discipline if an employee violates a rule, regulation or guideline of the City.

Dr. Traaen suggested that the Task Force members want to make it clear to staff that violating City regulations is grounds for discipline. Everyone concurred. Mr. Bruner noted that this is actually included in the draft of AR-320.

Chairman DeCabooter said this will be on the agenda of the next meeting as an action item and that further discussion might take place then. Mr. Derouin asked that the question of annual training on the code for employees be included in the motion.

Mr. Bruner remarked on the need for the Task Force to decide on the format of the code.

Mr. Derouin said he has a proposal to make when the Task Force gets to that item. He has changed his mind since the Task Force started. His own personal feeling in respect to appointed and elected officials is that it would be good to have a joint statement of purpose and a short code. He noted that the International City Managers Association is a model code that Paradise Valley used as a pattern. He suggested considering that for discussion purposes. The Task Force could then discuss enhancements to add to that document.

A discussion ensued. The consensus of the Task Force members was that brevity is desirable although content should not be sacrificed for brevity. Mr. Delaney agreed that the code should not be cumbersome. The best approach is to give a brief overview, maybe two pages, and then amplify points with examples.

Chairman DeCabooter suggested looking at the Paradise Valley and Fountain Hills codes. Before doing that, he thought they should go back to the matrix and maybe give Mr. Delaney a writing assignment to work on before the next meeting. There was general consensus on this point.

Mr. Delaney said that a core approach is needed to get things going. Looking at the matrix, he commented that many of the items are covered by State statute. This can be shortened with a statement to the effect that the City expects people to follow the law. Ms. Saunders-Hawranek commented that her draft preamble contains this point.

Mr. Bruner noted that it is good to have this in written form. People should know that they could get in trouble for ethics violations. Mr. Schade said this is often a question of ignorance.

Chairman DeCabooter commented that Mr. Delaney and Dr. Traaen could work together before the next meeting looking at the Paradise Valley, Fountain Hills and ICMA codes.

A discussion ensued on the need for the City Attorney to be proactive.

Dr. Traaen started to work through the matrix page by page. She asked the Task Force members for any additions or deletions to page 1. Chairman DeCabooter noted that although the Open Meeting Law is statutory, training by staff about the Open Meeting Law is not. That should be clarified, since training is an important focus.

Mr. Bruner stated that point 3.3, full disclosure, is the most important point to him. Financial disclosure concerns are related to conflicts of interest. Ms. Saunders-Hawranek noted that boards and commissions are also affected. Mr. Osborn said that orientation for new members of boards and commissions is conducted on a regular basis.

Chairman DeCabooter asked if an attorney is always present at executive sessions of City Council. Mr. Osborn replied that this depends. When personnel matters are under discussion an attorney may not always be present.

Mr. Delaney commented that people view the financial disclosure forms as a chore. If it is presented to them as a protection, their attitude will change.

Mr. Schade stated that full disclosure is crucial. Beyond full disclosure, Mr. Schade asked who ultimately defines what a conflict of interest is? Mr. Osborn said that officials can ask for an opinion ahead of time. Conflict of interest questions are very fact-based, so it is hard to generalize. The City Attorney's office can give a written opinion to protect the person. If the opinion turns out to be incorrect, the officer still has immunity. In reply to a question by Mr. Derouin, Mr. Osborn said that people do come to his office with questions about potential conflicts of interest affecting public officials.

Mr. Derouin said that he had some questions about 2.76 ii, financial disclosure. In subsection 8, gifts, he felt that the definition is too broad, because it says "any gift of \$500 or more," regardless of whether it has anything to do with the City of Scottsdale. One might argue that this is too broad.

Mr. Derouin went on to comment that the limit of \$500 is a significant sum of money, compared to the limit at the legislature. He said that it seems to him that in the area of gifts, the key element the Task Force is after is gifts from anybody that has anything to do with anything in front of the City. Influence is the key. There was consensus that the way the code is written is not specific enough.

Mr. Derouin noted that another issue is frequency of reporting. The current requirement is to report gifts only once a year. He wondered whether that is frequent enough with respect to gifts. Quarterly reporting might be better.

Finally, he pointed out that the term "gift" should be defined. He referred the Task Force to the written notes he had handed in. In the statute, there is some ambiguity to the term "item of value." This sounds like cash, but Mr. Derouin had suggested this be fleshed out more fully. His suggestion was that it should include the purchase of real or personal property at a value that is below the price offered to a member of the general public.

The gift amount should probably be smaller, but the identity of the giver is the key question. If the giver himself has business before the City or works for an entity that has business before the City or works for an entity related to an entity that has business before the City of Scottsdale, those gifts should be reported. This may be too complex. Mr. Osborn said he would suggest putting exceptions into the wording to exempt gifts from relatives.

Mr. Delaney said the threshold at the legislature is \$25. Chairman DeCabooter said he has to complete a lobbyist's report quarterly for the legislature.

Mr. Derouin said that with respect to conflict of interest, the standard should make it clear that in the case of a conflict, the person must refrain from participating in any manner: voting, discussing, or in any manner attempting to influence, or to modify, a decision. This language was taken from the League Of Cities And Towns brochure. He noted that the language in the statute prohibits participation but does not enlarge on what is considered to be participation. He has heard that statewide there is some confusion on this point, and that is why he would like the Scottsdale code to incorporate this language. This does not change State law, but clarifies it. It must be made clear that if a person recuses himself from voting, he cannot then meet with staff to discuss that same matter before City Council or a Commission.

The Task Force reviewed page 2, items 8 - 13 of the matrix.

Mr. Bruner suggested that the City should follow the rule at the legislature that after leaving office, an official cannot appear before the body for 12 months representing any party. Mr. Delaney said that the State statute provides a 12-month period, but it is specific to issues on a paid basis. Ms. Saunders-Hawranek expressed concern to deal with the old boys network.

Chairman DeCabooter and Mr. Derouin suggested that a 12-month period is too short to be a deterrent. A period of 24 or 36 months would be better. Mr. Delaney said he will research whether the City is allowed to be tougher than the State statute.

Mr. Osborn noted that a knowing violation of section 38-504 is a Class 6 felony.

Mr. Derouin noted that the Milpitas, California code I-310-2.170 says "State law and the Code do not explicitly bar the City Attorney from offering unsolicited legal advice either verbally or in writing on matters before the Council. This ordinance should be interpreted such that the City Attorney, in addition to regular duties, should be outspoken in giving advice on the validity of legal compliance on all matters." He remarked that the consensus of the Task Force seems to be to encourage the City Attorney to be proactive in assuring compliance.

Chairman DeCabooter added that an attorney needs to be present in all executive sessions to deal with the legalities of the Open Meeting Law.

Mr. Osborn said that most of the time, the City Attorney is there. Examples of exceptions would be personnel matters, executive searches, review of other charter officers, and selection of a new associate City judge. These are private conversations that have nothing to do with the City Attorney.

Several Task Force members disagreed with this statement. Mr. Osborn said that the Open Meeting Law states: "The only people that should be attending, beside the public officers themselves, are those that are reasonably necessary to accomplish the purpose of the meeting."

Chairman DeCabooter said his point is not the topic of the executive session, but an attorney should be present to make sure that the session stays on topic. The other Task Force members concurred with his statement. Mr. Derouin said that even at a session to discuss an executive search, a proactive attorney could ensure that the search is valid. All the issues that Mr. Osborn had mentioned are replete with potential legal problems.

Mr. Osborn said his question is whether or not, when the City Attorney is not giving legal advice, that that person should be there as a person reasonably necessary to decide the issue. This is a technical question. Mr. Delaney said that it is a legitimate question of finding a balance.

With regard to Mr. Derouin's suggestion, Mr. Delaney said he does not see how that could be incorporated into a Code of Ethics, although it might be a separate recommendation.

Mr. Schade said that the Task Force should be concerned with creating a culture of willingness to step up and enforce the code. A discussion ensued. Dr. Traaen noted Mr. Schade's concern and said that the Task Force might choose to append a minority report to the finished report.

Mr. Bruner said it is vital to have a good discussion of conflict of interest, gifts, and disclosure. This would cover most of the ground.

In answer to a question from Chairman DeCabooter, Mr. Delaney said he understood that the Task Force was asking him to work on merging the best elements from the ICMA model, Fountain Hills and Paradise Valley codes and adding in topics selected from the Task Force matrix. The document should be as short as possible.

The consensus of the meeting was that there should also be a handbook for training purposes, so that participants have some take home material. An affidavit of compliance should be included. Mr. Bruner noted that Human Resources Training Division could design the handbook. Mr. Derouin said that the Task Force report could recommend annual training and the preparation of a handbook that conveys the City's ethics policy. Mr. Bruner added that City employees should be asked to sign every year to the effect that they have gone through the policy.

Chairman DeCabooter asked Mr. Delaney, Mr. Osborn, and Dr. Traaen to work on this over the holidays. Their work product will be sent to Task Force members before the next meeting.

Mr. Derouin commented that he had referred to Mr. Kelly's list. The Task Force had not discussed enforcement. He asked Mr. Delaney to think about how issues are raised and resolved under the ethics code for elected and appointed officials. He believes that a process should be established, because otherwise no one will feel responsible for taking action.

Mr. Schade said that City Council has the ultimate authority. People need to know where to turn for a fair hearing. He thinks having an Ombudsman or ethics compliance officer would be a viable solution. This person might perform other functions in the City Attorney's office or Human Resources, but would be independent of their boss when dealing with these ethics issues.

Mr. Osborn said that in the past, the City had asked the City of Mesa Attorney to help investigate a conflict situation involving a member of City Council. This is a common way that entities handle such matters. Mr. Bruner noted that these problems arise infrequently.

FUTURE MEETING SCHEDULE AND AGENDA ITEMS

Chairman DeCabooter noted that two Task Force members were absent. He asked that staff email every member so that hopefully the whole Task Force can be present at the next meeting. After discussion, the next meetings were scheduled for 5:00 p.m. on January 17, January 31 and February 7, 2006.

OPEN CALL TO THE PUBLIC

Mr. Michael Kelly said he had circulated a paper he wrote to the Task Force. He has a lifelong interest in leadership and ethical behavior. His remarks were not intended as criticism.

The ultimate aim of the Ethics Task Force is to bring about the highest level of ethical behavior possible in Scottsdale city government. Ethical behavior is doing the right thing when no one is watching and there are no consequences for not acting ethically.

It is extremely important that the City Attorney be independent. The City Council hires the City Attorney and should look for an individual with strong moral courage and good character.

The training is important because people need to be sensitized. Some are simply unaware of the ethical issues facing them.

A preoccupation of the public is the old boys' network, as Lyle Wurtz had noted at the previous meeting. There can be a public perception of an inside power structure. Issues of this nature are frequently in the national news. The concept of disclosing associations, which Mr. Kelly raised in his paper, would help to level the playing field. The Task Force's attempt to deal with the problem of the revolving door is praiseworthy. Members of the public need to feel that they have equal access and that their concerns can be heard.

The Cunningham case in the national news illustrates that a gift can be an inflated house price. Anything that would not be available to the public should be considered as a gift. He spoke of his experience in Hillsborough County, Florida, where everyone who went to see a County Commissioner had to complete a lobbyist card, which was then public record. Although this might be considered draconian, it does remove the veil of perceived secrecy.

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On the issue of the revolving door, his opinion is that a former official should not be allowed to appear before that body on any item whatsoever for a year.

Mr. Delaney advised the Task Force that there is a way to work around the issue of the members giving feedback on the work product that they will receive before the next meeting. He, Mr. Osborn, and Dr. Traaen may talk one-on-one with the Task Force members. Mr. Osborn said there is no problem with sending out the draft, and Task Force members can send comments back to staff.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Citizen Code of Ethics Task Force adjourned at 6:48 p.m.


Respectfully submitted by:

Valerie Wegner
Administrative Secretary, Human Resources



Reviewed by:

Art DeCabooter, Chair



Officially approved by the Citizen Code of Ethics Task Force on January 17, 2006.